

180919

**WILLOUGHBY & HOEFER, P.A.**

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY  
JOHN M.S. HOEFER  
ELIZABETH ZECK\*  
RANDOLPH R. LOWELL  
K. CHAD BURGESS  
NOAH M. HICKS II\*\*  
M. McMULLEN TAYLOR  
BENJAMIN P. MUSTIAN

AREA CODE 803  
TELEPHONE 252-3300  
TELECOPIER 256-8062

\*ALSO ADMITTED IN TX

\*\*ALSO ADMITTED IN VA

July 24, 2006

**HAND DELIVERY & ELECTRONIC MAIL**

The Honorable Charles L.A. Terreni  
Chief Clerk/Administrator  
Public Service Commission of South Carolina  
101 Executive Center Drive  
Columbia, SC 29210

RE: Proposed revisions to Articles 5 and 7 of the Public Service Commission regulations; Docket No. 2006-9-WS

Dear Mr. Terreni:

On behalf of this firm's water and wastewater utility clients, let me express appreciation for the opportunity to offer comments on the suggested language for a proposed revision to the Sewerage and Water Utilities offered by the Office of Regulatory Staff ("ORS") by letter dated May 12, 2006.

ORS suggests an amendment to the language in Regulations 103-541 and 103-743 to provide that water and wastewater utilities must provide notice to the Commission and ORS of loan agreements. The proposed language is unnecessary, unwarranted, and duplicative. A filing of the proposed information serves no useful purpose. First, the Commission already requires approval of contracts that would impact the utility's ability to provide service, and that is the purported purpose for the suggested language – to better assess a utility's ability to serve customers. All the information that ORS or the Commission could need to make such an assessment is already provided on an annual basis vis-à-vis the annual reports, which specifically include information related to the plant and facilities and more importantly the financial health of the utility and any change in status over the past year. See, e.g., Annual Report Form Schedule 200. Thus, *the Commission and ORS already receive this information.* Moreover, the specific contractual information and agreements can be gathered in the scope of a rate proceeding, when the information is timely and holds some relevance and value.

This notice provision serves only to interfere with the business decisions of the individual utilities. Such a "notification" requirement imposes an additional and unnecessary burden on the regulated utility when the information serves no useful purpose.<sup>1</sup> Also, if a utility utilizes an established line of credit for system improvements, such additional pipe (i.e., facilities), then does each and every purpose of a segment of pipe require notice, as the line of credit surely carries with it a purchase money security interest for each expenditure?

Additionally, what would the Commission or ORS do with such notice? There would be no legal ground to inquire into the specifics of the business arrangement of the utility based on mere notice, and to do so would have the effect of the Commission and ORS second-guessing and imposing its own business judgment and opinions on the utility. As to the Commission, the notification itself and any further inquiry could constitute an *ex parte* communication. Further, this notification could have a chilling effect on utilities seeking monies for repairs, upgrades, or improvements that are needed to improve and maintain the integrity of the system.

In short, the proposed language is unnecessary to keep a watchful eye on the regulated utilities, and I strongly urge the Commission to reject the proposed language.

Again, the regulated water and wastewater utilities sincerely appreciate the Commission's time and consideration in reviewing the regulations and actively seeking the input of the regulated community. If you have any questions or would like to discuss any of these issues further, please do not hesitate to contact me.

Very truly yours,

**WILLOUGHBY & HOEFER, P.A.**



Randolph R. Lowell

RRL/msp

cc: Jocelyn G. Boyd, Esquire  
Joseph Melchers, Esquire  
David Butler, Esquire  
Jeffrey M. Nelson, Esquire  
Wendy B. Cartledge, Esquire  
(All via electronic mail only)

---

<sup>1</sup> For example, compliance with the notice could consist of simply stating: "Please be advised that a loan agreement has been executed in which the above-named utility's plant, facilities, and real property has been pledged as collateral." This offers no useful information. Moreover, if a utility did include additional information or general terms of the loan agreement, such information could constitute an *ex parte* communication.